IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8407 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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PANNABEN D BHAVSAR

Versus

COMMISSIONER

Appearance:

MR PINAKIN M RAVAL for Petitioners.

Mr. B.Y. Mankad, AGP for Respondents No. 1 to 3.

CORAM : MR.JUSTICE K.A.PUJ

Date of decision: 12/04/2002

ORAL JUDGEMENT

The petitioners, in this petition under Article 226 of the Constitution of India, have challenged the action of the respondent authorities while passing the order on 12.11.1990 at Annexure "D" and directing that the House Rent Allowance paid to the petitioners even after they had vacated accommodation at Gandhinagar should be recovered and that they were not entitled to HRA.

2. By way of an interim relief the petitioners have prayed that during the pendency of the petition the respondents may be restrained from implementing the order dated 12.11.90. This Court has admitted the petition on 5.12.90 and granted ad-interim relief in terms of Para 10-C of the petition. By virtue of this order granting ad-interim relief, it is submitted that no recovery was effected by the respondents from them and they have been continuously getting HRA from the respondent authorities.

3. The facts, giving rise to the present petition, are that the petitioners are State Government employees and they are working at Gandhinagar as Pharmacists and Nurses under the Office of Commissioner of Health Services (Medical). It is the case of the petitioners that since they are working at Gandhinagar they are entitled to HRA as per Government Resolution F.D. No. ECR-1087-4-M dated 1st June 1987. As per the said Resolution, HRA shall be paid to all employees (other than those provided with Government owned/hired accommodation) without requiring him to produce rent receipts. The employees shall, however, be required to furnish a certificate to the effect that they are incurring some expenditure on rent/contributing towards rent. It is further stated in the said Circular that the HRA shall also be paid to Government employees living in their own houses subject to their furnishing certificate that they are paying contribution towards house rent or maintenance of the house. The petitioners have further relied on the Finance Department Resolution No. VLB-1288-1494-J dated 23rd December 1988 wherein it is stated that due to difficult position about availability of Government accommodation in Ahmedabad, Baroda, Rajkot, Surat and Gandhinagar, the Government is now pleased to decide that when Government employees serving in the above cities vacate Government accommodation and would reside in private rental accommodation, they may also be allowed to draw HRA at an appropriate rate as admissible to other Government servants who are not offered Government accommodation from the date of such vacation. On the basis of these two circulars the petitioners have contended that the HRA is admissible to all Government employees who do not occupy accommodation allotted to them at Gandhinagar.

4. The petitioners have further submitted that they were not occupying Government accommodation and/or they had vacated the accommodation after acquiring own accommodation at Gandhinagar. It was further submitted that on acquiring their private accommodation the

petitioners had intimated the respondent No.1 and on the basis of the said intimation the respondent No.1 had sanctioned the HRA to be given to the petitioners. The petitioners have further submitted that the rent free quarters sanctioned to them were ordered to be vacated on the ground that they acquired own accommodation. The letter was produced by the petitioners at Annexure 'C'. It was further contented that inspite of these Government Resolutions, an order was passed by the respondent No.1 on 12.11.90 directing that the HRA paid to the petitioners after they had vacated accommodation at Gandhinagar should be recovered and that they are not entitled to HRA. It is this order of the respondents which is under challenge before this Court. While challenging this order, the petitioners have raised contention that all Government servants at Gandhinagar are entitled to HRA even if they occupy private accommodation and hence the order passed by the respondent No.1 is in violation of the Articles 14 of the Constitution of India. It was further contended that the impugned order for recovery of the HRA and for refusal to pay HRA is in flagrant violation of the Government Resolutions already issued by the Government earlier.

5. The respondents have opposed the petition and by filing their affidavit-in-reply it was submitted that there are two categories of employees, entitled to HRA, (a) Govt. employee entitled to rent-free accommodation and (b) Govt. employees who are not entitled to RFA. According to the respondents, the petitioners in this petition are Staff Nurses and Pharmacists and hence they are entitled to Rent Free Accommodation. It is further contended that as per the Government Resolution dated 1.12.75 the Government employees who are entitled to rent free accommodation are to be granted HRA only when they are not provided Government accommodation and for the period during which they are not provided such accommodation by the Government. The respondents have also produced certain annexures along with their affidavit-in-reply. Annexure III to the said reply is the Circular No. VI.B-1279-1656-J dated 13th November 1979, wherein it is stated that in Para 1(3) of the order dated 1st December 1975, provision has been made as to how to regulate House Rent Allowance to the employees working in classified Cities, who are entitled to rent free accommodation but to whom the same is not provided and who are residing in private rented houses. It is further mentioned in the said Circular that a question has been raised as to at what rates HRA in lieu of rent free accommodation is admissible to such of the employees working in classified cities and who are residing in

their own house when rent free accommodation is not provided by the Government. The Government was therefore pleased to clarify that such employees will be entitled to the amount of rent chargeable for Government accommodation from employees similarly placed but not entitled to rent free accommodation and in addition to HRA admissible to the corresponding employees. This Circular makes it very clear that a Government employee who is not provided rent free accommodation and who is having his own house is entitled to HRA. Even the Circular dated 1st December 1975, which is referred to in the Circular dated 13th November 1979, also makes it clear that Government employees, who are entitled to rent free accommodation but to whom rent free accommodation is not provided, should be granted HRA for the period during which they are not provided with such accommodation by Government at the rates specified therein.

6. The respondents have further raised an argument that the petitioners are not entitled to HRA as they have vacated the Government accommodation allotted to them by the Government. There is no substance in this argument as the petitioners have not vacated the Government accommodation out of their own volition or free desire. As a matter of fact, because of scarcity of the residential accommodations in the classified cities, the Government employees who are having their own house were asked by the Government to vacate the said accommodation and were asked to move to their own houses. So, simply because the Government employees have vacated Government house, it cannot be said that they are not entitled to HRA especially when all earlier circulars referred to hereinabove specifically state that such Government employees are entitled to HRA. The respondents have further submitted that the respondents through their officers have in affidavit-in-reply stated that the rules which are referred to in the said para are applicable to Government employees who are not entitled to rent free accommodation. As a matter of fact, while reading these rules, it is nowhere stated that only those Government employees are entitled to HRA who are not entitled to rent free accommodation.

7. I have heard the ld. advocate appearing for the petitioner as well as the learned Assistant Government Pleader appearing for the respondents. I have also gone through the pleadings of the respective parties and the documents furnished by them along with the petition as well as the affidavit-in-reply. I am of the view, that the petitioners are entitled to House Rent Allowance after vacating the rent free accommodation provided to

them as the Government was finding it difficult to provide residential accommodation to all those employees who are entitled to rent free accommodation, and once having asked them to vacate the Government premises or if the Government is not in a position to provide the rent free accommodation, even if they are entitled to, in such a situation to deny HRA to such employees is contrary to the Government Resolutions which are already in force and simply on the basis of the audit objection raised by the audit party, the said benefit of granting HRA cannot be withdrawn. Once it is held that the petitioners are entitled to House Rent Allowance, there is no question of effecting any recovery from them. In this view of the matter, the petitioners are entitled to House Rent Allowance, and no recovery should be effected from them. The petition is, therefore, allowed. Rule is made absolute with no order as to costs.

[K.A. Puj, J.]

rmr.